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January 10, 2003

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Ex Parte Communication, CC Docket No. 96-45**  
**Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R.**  
**§ 54.207(c), for Commission Agreement in Redefining the Service Area of**  
**CenturyTel of Eagle, Inc., a Rural Telephone Company**

Ucar Madam Secretary:

This letter is filed pursuant to FCC Rule Section 1.1206(b)(1) in the above-referenced proceeding. On January 9, 2003, we submitted a written *ex parte* communication in this proceeding addressed to William Maher, Chief of the Wireline Competition Bureau. A copy was also forwarded to your office. **As** required under Section 1.1206(b)(1), we hereby submit two additional copies under separate cover.

Should you have any questions regarding this matter, please contact the undersigned,

Sincerely,

David A. LaFuria  
Allison M. Jones  
Counsel for N.E. Colorado Cellular, Inc.

David A. LaFuria  
Allison M. Jones

0+1

FILED  
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William Maher, Chief  
 Wireline Competition Bureau  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, SW  
 Washington, DC 20554

**Re: Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company - Ex Parte Communication**

Dear Mr. Maher:

On behalf of N.E. Colorado Cellular, Inc. ("NECC"), I write concerning the letter submitted on behalf of CenturyTel of Eagle, Inc. ("CenturyTel"), in the above-referenced proceeding on December 30, 2002. The letter references an *ex parte* meeting of December 23 between CenturyTel's representatives and the Wireline Competition Bureau to discuss CenturyTel's Application for Review, filed on December 17, 2002. Because NECC obtained a copy of the letter on January 2, 2003 (the day the letter first became available on the ECFS), it did not have an opportunity to fully address issues raised therein in the Opposition NECC submitted on the same day.

According to CenturyTel's *ex parte*, it was asked whether any similar petitions have been granted by the Commission in the past. It appears that CenturyTel did not mention that on at least three separate occasions, the Commission has been presented with a request for redefinition of rural LEC service areas.<sup>1</sup> In all three of those cases, the Commission put the request on Public

<sup>1</sup> See, *Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. on Tribal Lands within the State of Arizona*, DA 01-409 (Feb. 15, 2001); *Smith Bagley, Inc. Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands within the State of Arizona*, DA 01-814 (April 2, 2001);

Notice and did not initiate a proceeding pursuant to Section 54.207.<sup>2</sup> As a result, these redefinitions became effective ninety days after the Public Notice date, in accordance with the Commission's Rules. In two of these cases, the carrier sought to redefine the service area of CenturyTel of the Southwest, Inc.

It also appears from the letter that CenturyTel may have mischaracterized the nature of the Washington redefinition proceeding. CenturyTel states that the primary objective behind the proceeding was to enable rural LECs to establish different cost zones for high-cost support purposes. In fact, a key factor behind the FCC's approval of the disaggregation proposal was the furtherance of competition. The Commission remarked, "we believe that our decision in this matter accords with the Commission's endeavor to encourage states and carriers to find innovative ways to foster a pro-competitive environment, and to foster better use of available support."

CenturyTel also brought to your attention two cases where ETC designation of wireless carriers was purportedly denied. In one of those cases, CenturyTel's characterization is inaccurate. In the South Dakota case, GCC License Corp. ("GCC") did in fact receive ETC status. Although the South Dakota Public Utilities Commission ("PUC") initially declined to grant ETC status to GCC, the decision was reversed by the circuit court, and upheld by the South Dakota Supreme Court. The matter was remanded to the PUC for further proceedings and on remand the PUC granted ETC status to GCC in both rural and non-rural areas. A copy of the PUC's Order on remand is attached for your reference.

The Utah Public Service Commission ("PSC") denied WWC Holding Co., Inc.'s ("WWC") request for ETC status in rural areas, reasoning that the designation of an additional ETC in rural areas would increase burdens on the *state* universal service fund. This decision was ultimately affirmed by the Utah Supreme Court of the State of Utah, primarily because the Court could not find that the PSC had abused its discretion. Based on our review of the case and

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*Smith Bagley, Inc. Petitions to Redefine the Service Area of CenturyTel of the Southwest, Inc. in the State of New Mexico*, DA 02-602 (March 13, 2002).

Copies of the Public Notices issued in response to these filings are attached hereto for your convenience.

*Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and **Order**, 15 FCC Rcd 9921, at ¶18 (1999).

William Maher, Chief  
January 9, 2003  
Page 3

subsequent discussions with staff at the PSC, we believe that if the petitioner had merely requested federal universal service funding, its application would have been granted. Accordingly, we believe that the Utah case is inapplicable and it remains the only case **we** are aware of where a CMRS carrier's petition for ETC status has been denied by a final order.

We believe it is only fair to point out that at least eighteen wireless carriers in fourteen states have been designated as CETCs at the state level in rural areas, and each of these designations was found to be in the public interest.<sup>4</sup> For your reference, we have attached two recent state decisions that you may find useful. One is the grant of ETC status to U.S. Cellular Corp. by the Public Service Commission of Wisconsin. The second is a grant to RCC Minnesota, Inc. by the Washington Utilities and Transportation Commission. Both are representative of the great weight of precedent among the states that have considered petitions for ETC status.

Finally, NECC plans to comment on this week's Public Notice (DA-03-26) announcing the WCB's consideration of CenturyTel's *ex parte* request to suspend the decision to not open a proceeding in the above-referenced case. We are convinced that when each party has had an opportunity to present its case, the Bureau will conclude that its decision was indeed correct and that competitive entry by carriers ready willing and able to serve rural Colorado should not be delayed.

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<sup>4</sup>See, e.g., United States Cellular Corp. et al, 8225-TI-I02 (Pub. Svc. Comm'n of Wisc., mailed December 20, 2002); Inland Cellular Telephone Co.; Docket No. UT-023040 (Wash. Util. & Transp. Comm'n Aug. 30, 2002); RCC Minnesota, Inc., Docket No. UT-023033 (Wash. Util. & Transp. Comm'n **Auy.** 14, 2002); Midwest Wireless Iowa, L.L.C., Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000); Smith Bagley, Inc., Utility Case No. 3026, (N.M. Pub. Reg. Comm'n Feb. 19, 2002); RFB Cellular, Inc., Case No. U-13145 (Mich. PSC Nov. 20, 2001); WWC License LLC, Docket No. 00-6003 (Nev. PUC Aug. 22, 2000); WWC Texas RSA L.P., PUC Docket No. 22295, SOAH Docket No. 473-00-1 168 (Tex. PUC Oct. 30, 2000).

William Maher, Chief  
January 9, 2003  
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I trust that you will find this information to be useful

Sincerely,

A handwritten signature in black ink, appearing to read "David A. LaFuria".

David **A.** LaFuria  
Counsel for N.E. Colorado Cellular, Inc.

Enclosures

cc: Marlene H. Dortch, Secretary  
Anita Cheng, **Esq.**  
Jessica Rosenworcel, Esq.



# PUBLIC NOTICE

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DA 01-409

**SMITH BAGLEY, INC. PETITIONS FOR AGREEMENT TO REDEFINE THE  
SERVICE AREAS OF NAVAJO COMMUNICATIONS COMPANY, CITIZENS  
COMMUNICATIONS COMPANY OF THE WHITE MOUNTAINS, AND CENTURY  
TEL OF THE SOUTHWEST, INC. ON TRIBAL LANDS WITHIN THE STATE OF  
ARIZONA**

**CC Docket No. 96-45**

**Release Date: February 15, 2001**

**Comment Date: March 16, 2001**

**Reply Comment Date: March 30, 2001**

The Common Carrier Bureau provides notice that Smith Bagley, Inc. (Smith Bagley) has filed a petition, pursuant to section **54.207** of the Commission's rules,<sup>1</sup> requesting the Commission's consent to the Arizona Corporation Commission's (Arizona Commission) proposed "service area"<sup>2</sup> definition for areas served **by** rural telephone companies on tribal lands within Arizona.<sup>3</sup> The Arizona Commission proposes to define Smith Bagley's service area as an

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<sup>1</sup> 47 C.F.R. § 54.207.

<sup>2</sup> Section 214(e)(5) defines the term "service area" as a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanism." For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company." 47 U.S.C. § 214(e)(5).

<sup>3</sup> *Petition of Smith Bagley, Inc. to Redefine Local Exchange Carrier Service Area Definitions of Navajo Communications Company, Citizens Communications Company of the White Mountains and Century Tel of the Southwest, Inc. Within the State of Arizona as Set Forth in Part 36 of the Commission's Rules* in CC Docket No. 96-45, filed by Smith Bagley on February 1, 2001 (Smith Bagley Petition). The rural carriers that provide service within Smith Bagley's proposed service area are Navajo Communications Company (Navajo), Citizens Utilities Company (Citizens), CenturyTel of the Southwest, Inc. (CenturyTel), and Table Top Telephone Company (Table Top). See also Smith Bagley Petition at 6, Exh. C (containing a list of the wire centers composing Smith Bagley's proposed service area).

area different from the study areas<sup>4</sup> of three rural telephone companies for the purpose of determining federal universal service obligations and support mechanisms.’ Specifically, the Arizona Commission proposes to define Smith Bagley’s service area consistent with that portion of Smith Bagley’s existing cellular service contour that encompasses tribal lands in Arizona.<sup>6</sup>

If the Commission does not act on the petition within 90 days of the release of this Public Notice, the definition proposed by the Arizona Commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.’

The Petition: On December 15, 2000, the Arizona Commission issued an order designating Smith Bagley as an eligible telecommunications carrier (ETC), under section 214(e) of the Communications Act of 1934, as amended (the Act), to receive federal universal service support for service provided on tribal lands.<sup>8</sup> In so doing, the Arizona Commission concluded that it was in the public interest to ‘designate Smith Bagley as an ETC in the service areas of several rural telephone companies.’<sup>9</sup>

In that proceeding, Smith Bagley requested ETC designation for “those areas within its existing service contour which encompass Native American lands.”<sup>10</sup> These areas are served by four rural telephone carriers: Navajo, CenturyTel, Citizens, and Table Top.” The Arizona

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<sup>4</sup> Generally, a study area corresponds to an incumbent local exchange carrier’s entire service territory within a state. See 47 C.F.R. § 54.207(b).

<sup>5</sup> *Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2) and A.C.C. R-14-2-1203*, Docket No. T-02556A-99-0207, Decision No. 63269, Order (Ariz. Com. Dec. 15, 2000) (Arizona Commission Order). The Arizona Commission has indicated that it will conduct an expedited process to determine whether that portion of Table Top’s study area located on tribal lands should be included in Smith Bagley’s designated service area. Arizona Commission Order at 10. Smith Bagley Petition at n.9. Therefore, Table Top’s service area definition is not subject to this Public Notice.

<sup>6</sup> These tribal lands include portions of the Navajo Reservation, the Hopi Reservation, the Pueblo of Zuni Reservation, and the White Mountain Apache Reservation located in Arizona. Arizona Commission Order at 8-9, 16. See also Smith Bagley Petition at 5-6.

<sup>7</sup> See 47 C.F.R. § 54.207(c)(3)(ii)

<sup>8</sup> See generally Arizona Commission Order. A copy of the Arizona Commission’s Order is attached to Smith Bagley’s petition as Exhibit A.

<sup>9</sup> Arizona Commission Order at 12. Specifically, the Arizona Commission found that Smith Bagley will be “extending service into many currently unserved or underserved high cost areas which traditional wireline carriers may never serve. Additionally, SBI has established to the Staff’s satisfaction that the rural carriers’ special status under the 1996 Act will not be adversely affected. Finally, there should be no administrative burden imposed upon the rural LECs since disaggregating the service area at the wire center level will not impact the rural LECs current calculation of costs on a study area basis.” *Id.* at 9-10.

<sup>10</sup> Arizona Commission Order at X

<sup>11</sup> Arizona Commission Order at 8-9.

Commission noted that Smith Bagley is not licensed to provide service throughout the rural telephone companies' study areas, and is therefore unable to provide service to the entire study areas of Navajo, CenturyTel, and Citizens." The Arizona Commission therefore proposed to redefine the service areas of Navajo, CenturyTel, and Citizens so that Smith Bagley's defined service area would be consistent with that portion of its existing cellular service contour which encompass portions of the Navajo Reservation, Hopi Reservation, Pueblo of Zuni Reservation, and White Mountain Apache Reservation.<sup>13</sup> With regard to Table Top, the Arizona Commission has indicated that it will conduct an expedited process to determine whether the portion of Table Top's study area located on tribal lands should also be included in Smith Bagley's designated service area.<sup>14</sup> The Bureau will issue a separate Public Notice relating to any proposed modified service area definition for Table Top at that time. In compliance with the request of the Arizona Commission, Smith Bagley has filed a petition with the Commission seeking approval of the proposed modified service area definition for the Navajo, CenturyTel, and Citizen telephone companies.<sup>15</sup>

Commission Rules: For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company."<sup>16</sup> Section 54.207 of the Commission's rules<sup>17</sup> and the *Universal Service Order*<sup>18</sup> set forth the procedures for consideration of petitions seeking to designate service areas for rural telephone companies that are different from such companies' study areas. Specifically, section 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations ~~of~~ any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.<sup>19</sup>

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<sup>12</sup> Arizona Commission Order at 9

<sup>13</sup> Arizona Commission Order at 10

<sup>14</sup> Arizona Commission Order at 10.

<sup>15</sup> Arizona Commission Order at 16-17. *See also* Letter from David A. LaFuria, Counsel for Smith Bagley, to Magalie Roman Salas, FCC, dated February 1, 2001

<sup>16</sup> *See* 47 U.S.C. § 214(e)(5)

<sup>17</sup> 37 C.F.R. § 54.207

<sup>18</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881, para. 188 (1997) (*Universal Service Order*) (subseq. history omitted).

<sup>19</sup> 47 C.F.R. § 54.207(c)(1)(i), (ii)



Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice.<sup>20</sup> If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5).<sup>21</sup> If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>22</sup> Under section 54.207(e) of the Commission's rules, the Commission delegates its authority under section 54.207(c) to the Chief of the Common Carrier Bureau.<sup>23</sup>

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **March 16, 2001**, and reply comments on or before **March 30, 2001**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 5-A422, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Pursuant to section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a penit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

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<sup>20</sup> 47 C.F.R. § 54.207(c)(3). The rules require the Commission to issue a Public Notice of any petition to define a service area served by a rural telephone company to be other than such company's study area. 47 C.F.R. § 54.207(c)(2).

<sup>21</sup> See 47 C.F.R. § 54.207(c)(3)(i).

<sup>22</sup> See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>23</sup> 47 C.F.R. § 54.207(c).

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For further information, contact Richard D. Smith or Anita Cheng, Accounting Policy Division, Common Carrier Bureau at (202) 418-7400, TTY (202) 418-0484.



# PUBLIC NOTICE

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DA 01-814

## SMITH BAGLEY, INC. PETITIONS TO REDEFINE THE SERVICE AREA OF TABLE TOP TELEPHONE COMPANY ON TRIBAL LANDS WITHIN THE STATE OF ARIZONA

CC Docket No. **96-45**

Release Date: April 2, 2001

Comment Date: April 30, 2001

Reply Comment Date: May 14, 2001

The Common Carrier Bureau provides notice that Smith Bagley, Inc. (Smith Bagley) has filed a petition, pursuant to section 54.207 of the Commission's rules,<sup>1</sup> requesting the Commission's consent to the Arizona Corporation Commission's (Arizona Commission) proposed "service area"<sup>2</sup> definition for areas served by Table Top Telephone Company (Table Top) within Arizona.<sup>3</sup> The Arizona Commission proposes to define Smith Bagley's service area as an area different from the study area<sup>4</sup> of Table Top for the purpose of determining federal universal service obligations and support mechanisms.<sup>5</sup> Specifically, the Arizona Commission

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<sup>1</sup> 47 C.F.R. § 24.207.

<sup>2</sup> Section 214(e)(5) defines the term "service area" as a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanism." For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company." 41 U.S.C. § 214(e)(5).

<sup>3</sup> *Amendment to Petition to Redefine Local Exchange Carrier Serving Areas*, CC Docket No. 96-45, filed by Smith Bagley on March 28, 2001 (Smith Bagley Petition).

<sup>4</sup> Generally, a study area corresponds to an incumbent local exchange carrier's entire service territory within a state. See 37 C.F.R. § 54.207(b).

<sup>5</sup> *Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2) and FCC R-14-2-1203*, Docket No. T-02556A-99-0207, Decision No. 63421, Order (Ariz. Com. March 9, 2001) (Order).

proposes to modify Smith Bagley's service area to include those portions of Table Top's Sanders exchange located on tribal lands.'

If the Commission does not act on the petition within 90 days of the release of this Public Notice, the definition proposed by the Arizona Commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.'

The Petition: On December 15, 2000, the Arizona Commission issued an order designating Smith Bagley as an eligible telecommunications carrier (ETC), under section 214(e) of the Communications Act of 1934, as amended (the Act), to receive federal universal service support for service provided on tribal lands.<sup>6</sup> In so doing, the Arizona Commission concluded that it was in the public interest to designate Smith Bagley as an ETC in the service areas of several rural telephone companies.'

In that proceeding, Smith Bagley requested ETC designation for "those areas within its existing service contour which encompass Native American lands." These areas are served by four rural telephone carriers: Navajo, CenturyTel, Citizens, and Table Top." The Arizona Commission noted that Smith Bagley is not licensed to provide service throughout the rural telephone companies' study areas, and is therefore unable to provide service to the entire study areas of these rural telephone companies." The Arizona Commission therefore proposed to redefine the service areas of Navajo, CenturyTel, and Citizens so that Smith Bagley's defined service area would be consistent with that portion of its existing cellular service contour which encompass portions of the Navajo Reservation, Hopi Reservation, Pueblo of Zuni Reservation, and White Mountain Apache Reservation." With regard to Table Top, the Arizona Commission

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<sup>6</sup> Order at 2

<sup>7</sup> See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>8</sup> See *Application of Smith Bagley, Inc., for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2) and 47 C.F.R. 14.203*, Docket No. T-02556A-99-0207, Decision No. 63269, Order (Ariz. Comm. Dec. 15, 2000) (Arizona Commission Order).

Arizona Commission Order at 12. Specifically, the Arizona Commission found that Smith Bagley will be "extending service into many currently unserved or underserved high cost areas which traditional wireline carriers may never serve. Additionally, SBI has established to the Staff's satisfaction that the rural carriers' special status under the 1996 Act will not be adversely affected. Finally, there should be no administrative burden imposed upon the rural LECs since disaggregating the service area at the wire center level will not impact the rural LECs current calculation of costs on a study area basis." *Id.* at 9-10.

<sup>10</sup> Arizona Commission Order at 8

<sup>11</sup> Arizona Commission Order at 8-9

<sup>12</sup> Arizona Commission Order at 9

<sup>13</sup> Arizona Commission Order at 10. The Commission has issued a separate Public Notice relating to the proposed service areas of these rural telephone companies. See *Smith Bagley Petitions for Agreement to Redefine the*

indicated that it would conduct an expedited process to determine whether the portion of Table Top's study area located on tribal lands should also be included in Smith Bagley's designated service area.<sup>14</sup>

On March 9, 2001, the Arizona Commission issued an Order recommending that the service area definition for Smith Bagley be modified to include those reservation lands located within Table Top's Sanders exchange." In compliance with the request of the Arizona Commission, Smith Bagley has filed a petition with the Commission seeking approval of the proposed modified service area definition.<sup>16</sup>

Commission Rules: For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company."<sup>17</sup> Section 54.207 of the Commission's rules<sup>18</sup> and the *Universal Service Order*<sup>19</sup> set forth the procedures for consideration of petitions seeking to designate service areas for rural telephone companies that are different from such companies' study areas. Specifically, section 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.<sup>20</sup>

Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone

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*Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and Century Tel of the Southwest, Inc. on Tribal Lands Within the State of Arizona*, Public Notice, CC Docket No. 96-45, DA 01-409 (rel. Feb. 15, 2001).

<sup>14</sup> Arizona Commission Order at 10.

<sup>15</sup> Order at 2. As part of that proceeding, TableTop filed a letter with the Arizona Commission indicating that it has no objection to including the reservation areas located within its Sanders exchange in Smith Bagley's designated service area. *Id.*

<sup>16</sup> Smith Bagley Petition at 2

<sup>17</sup> See 47 U.S.C. § 214(e)(5).

<sup>18</sup> 47 C.F.R. § 54.207

<sup>19</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881, para. 188 (1997) (*Universal Service Order*) (subseq. history omitted).

<sup>20</sup> 47 C.F.R. § 54.207(c)(1)(i), (ii)

company within ninety days of the release date of a Public Notice." If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5).<sup>22</sup> If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>23</sup> Under section 54.207(e) of the Commission's rules, the Commission delegates its authority under section 54.207(c) to the Chief of the Common Carrier Bureau.<sup>24</sup>

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **April 30, 2001**, and reply comments on or before **May 14, 2001**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalic Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 5-A422, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

Pursuant to section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a *pennit-but-disclose* proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Richard D. Smith or Anita Cheng, Accounting Policy

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<sup>21</sup> 37 C.F.R. § 54.207(c)(3). The rules require the Commission to issue a Public Notice of any petition to define a service area served by a rural telephone company to be other than such company's study area. 47 C.F.R. § 54.207(c)(2).

<sup>22</sup> See 47 C.F.R. § 54.207(c)(3)(i)

<sup>23</sup> See 47 C.F.R. § 54.207(c)(3)(ii)

<sup>24</sup> 47 C.F.R. § 54.207(e)

Division, Common Camer Bureau at (202) 418-7400, TTY (202) 418-0484.



# PUBLIC NOTICE

Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

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DA 02-602

## SMITH BAGLEY, INC. PETITIONS TO REDEFINE THE SERVICE AREA OF CENTURY TEL OF THE SOUTHWEST, INC. IN THE STATE OF NEW MEXICO

CC Docket No. 96-45

Release Date: March 13, 2002

Comment Date: April 4, 2002

Reply Comment Date: April 15, 2002

The Common Carrier Bureau provides notice that Smith Bagley, Inc. (Smith Bagley) has filed a petition, pursuant to section 54.207 of the Commission's rules,<sup>1</sup> requesting the Commission's consent to the New Mexico Public Regulation Commission's (New Mexico Commission) proposed "service area" definition for areas served by Century Tel of the Southwest, Inc. (Century Tel) within New Mexico.<sup>2</sup> The New Mexico Commission proposes to define Smith Bagley's service area as an area different from the study area<sup>4</sup> of Century Tel for the purpose of determining federal universal service obligations and support mechanisms.<sup>3</sup>

<sup>1</sup> 47 C.F.R. § 54.207

<sup>2</sup> Section 214(e)(5) defines the term "service area" as a geographic area established by a State commission or the Federal Communications Commission for the purpose of determining universal service obligations and support mechanisms. For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company." 47 U.S.C. § 214(e)(5).

<sup>3</sup> *Petition of Smith Bagley, Inc. to redefine Local Exchange Carrier Service Area Definitions of Century Tel of the Southwest, Inc. Within the State of New Mexico*, CC Docket No. 96-45, filed by Smith Bagley on March 1, 2002 (Smith Bagley Petition). See also Letter from David A. LaFuria, Counsel for Smith Bagley, to William F. Caton, FCC, dated March 8, 2002.

<sup>4</sup> Generally, a study area corresponds to an incumbent local exchange carrier's entire service territory within a state. See 47 C.F.R. § 54.207(b).

See *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Final Order, Utility Case No. 3026 (NMCCom Feb. 19, 2002) (New Mexico Order) (adopting the Recommended Decision of the Hearing Examiner and Certification of Stipulation). See also *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Recommended Decision of the Hearing



Specifically, the New Mexico Commission proposes to modify Smith Bagley's service area to include the Zuni, Ramah, and Fence Lake wire centers and Smith Bagley's existing service contour within the Pine Hill, Vandenvagn, Gallup, and Grants wire centers.<sup>6</sup> The New Mexico Commission recommended that Century Tel's noncontiguous Pecos exchange be delineated as its own service area and that the exchanges served by Smith Bagley be grouped together as a second separate service area.

If the Commission does not act on the petition within 90 days of the release of this Public Notice, the definition proposed by the New Mexico Commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.'

The Petition: On February 19, 2002, the New Mexico Commission issued an order designating Smith Bagley as an eligible telecommunications carrier (ETC), under section 214(e) of the Communications Act of 1934, as amended (the Act), to receive federal universal service support for service provided in areas of New Mexico.<sup>8</sup> In so doing, the New Mexico Commission concluded that it was in the public interest to designate Smith Bagley as an ETC in the study area of Century Tel, a rural telephone company.'

The New Mexico Commission conditioned Smith Bagley's ETC designation upon confirmation of its proposed service area designation by this Commission." In compliance with the request of the New Mexico Commission, Smith Bagley has filed a petition with the Commission seeking approval of the proposed modified service area definition."

Commission Rules: For areas served by a rural telephone company, section 214(e)(5) provides that the company's service area will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.'"" Section 54.207 of the Commission's rules<sup>13</sup> and the *Universal Service Order*<sup>14</sup> set

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Examiner and Certification of Stipulation, Utility Case No. 3026 (Aug. 14, 2001) (New Mexico Recommended Decision).

<sup>6</sup> New Mexico Recommended Decision at 13-14; Smith Bagley Petition at 6, **Exh. B** – Map of the proposed service area.

<sup>7</sup> See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>8</sup> See New Mexico Order.

<sup>9</sup> New Mexico Recommended Decision at 17.

<sup>10</sup> New Mexico Recommended Decision at 22.

<sup>11</sup> See generally Smith Bagley Petition.

<sup>12</sup> See 47 U.S.C. § 214(e)(5).

<sup>13</sup> 47 C.F.R. § 54.207.

forth the procedures for consideration of petitions seeking to designate service areas for rural telephone companies that are different from such companies' study areas."

Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice.<sup>14</sup> If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5).<sup>15</sup> If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.<sup>16</sup> Under section 54.207(e) of the Commission's rules, the Commission delegates its authority under section 54.207(c) to the Chief of the Common Carrier Bureau."

An original and four copies of all comments must be filed with William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., TW-B204, Washington D.C. 20554. In addition, four copies of each comment must be delivered to Sheryl Todd, Common Carrier Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-A520, Washington, D.C., 20554, and one copy to Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington D.C., 20554. In accordance with the Commission's earlier Public Notice announcing that hand-delivered or messenger-delivered filings are no longer accepted at the Commission's headquarters, hand-delivered or messenger-delivered filings must be delivered to **236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002**.<sup>20</sup> The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

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<sup>14</sup> *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881, para. 188 (1997)(*Universal Service Order*)(subseq. history omitted).

<sup>15</sup> 47 C.F.R. § 54.207(c)(1)(i), (ii). Specifically, section 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

<sup>16</sup> 47 C.F.R. § 54.207(c)(3). The rules require the Commission to issue a Public Notice of any petition to define a service area served by a rural telephone company to be other than such company's study area. 47 C.F.R. § 54.207(c)(2).

<sup>17</sup> See 47 C.F.R. § 54.207(c)(3)(i).

<sup>18</sup> See 47 C.F.R. § 54.207(c)(3)(ii).

<sup>19</sup> 47 C.F.R. § 54.207(e).

<sup>20</sup> See *FCC Announces New Filing Location for Paper Documents*, Public Notice, DA 01-2Y19 (rel. December 14, 2001).

Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service (USPS) Express Mail and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location will be open 8:00 a.m. to 5:30 p.m. The USPS first-class mail, Express Mail, and Priority Mail should continue to be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The USPS mail addressed to the Commission's headquarters actually goes to our Capitol Heights facility for screening prior to delivery at the Commission.

<b>If you are sending this type of document or using this delivery method...</b>	<b>It should be addressed for delivery to...</b>
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 a.m. to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12 <sup>th</sup> Street, SW Washington, DC 20554

In addition to filing paper comments, parties are encouraged also **to file** comments electronically using the Commission's Electronic Comment Filing System (ECFS). **See** Electronic Filing of Document in Rulemaking Proceedings, 63 Fed Reg. 24, 121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by the Internet e-mail. To receive instructions, send an email to [ecfs@fcc.gov](mailto:ecfs@fcc.gov) and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

For further information, contact Richard D. Smith or Anita Cheng, Accounting Policy Division, Common Carrier Bureau at (202) 418-7400, TTY (202) 418-0484.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE FILING BY GCC</b>	)	<b>ORDER DESIGNATING GCC</b>
<b>LICENSE CORPORATION FOR DESIGNATION</b>	)	<b>LICENSE CORPORATION</b>
<b>AS AN ELIGIBLE TELECOMMUNICATIONS</b>	)	<b>AS AN ELIGIBLE</b>
<b>CARRIER</b>	)	<b>TELECOMMUNICATIONS</b>
	)	<b>CARRIER IN NON-RURAL</b>
	)	<b>TELEPHONE COMPANY</b>
	)	<b>EXCHANGES</b>
	)	<b>TC98-146</b>

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412. State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

GCC appealed the Commission's decision to circuit court. The circuit court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the circuit court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the circuit court's decision.

On August 30, 2001, the Commission received a proposed order from GCC along with a list of the Qwest exchanges within which GCC would be designated as an ETC.

In accordance with the Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, IT IS ORDERED:

1. GCC is designated as an ETC pursuant to 47 U.S.C. section 214(e)(2) in the exchanges listed on Attachment A, which is incorporated by reference. These exchanges constitute all non-rural telephone company exchanges in the state of South Dakota:

2. In providing service in South Dakota as an ETC, GCC shall comply with all applicable federal and state requirements;

3. The Commission retains jurisdiction over this docket and GCC for the purpose of ensuring that GCC's provision of services as an ETC complies with all applicable federal and state requirements;

4. The Commission shall send a letter, in the form of Attachment B hereto, notifying the Federal Communications Commission and the Universal Service Administrative Company of GCC's designation as an ETC in all non-rural telephone company exchanges in the state of South Dakota.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18th day of October, 2001

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
JAMES A. BURG, Chairman

\_\_\_\_\_  
PAM NELSON, Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER</b>	} } } }	<b>FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER TC98-146</b>
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On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest;

On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

At its September 7, 2001, meeting, the Commission considered this matter. The Commission voted to find that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

Based on the evidence of record, the Commission makes the following findings of fact and conclusion: of law:

#### **FINDINGS OF FACT**

1. On August 25, 1998, the Commission received a request from GCC requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.
2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an eligible telecommunications carrier (ETC) for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).
3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.
4. The Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST). Following the hearing and briefing by the parties, the Commission unanimously voted to deny the application.

5. The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

6. GCC appealed the Commission's decision to the Circuit Court. The Circuit Court reversed the Commission's decision. See Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235. For areas served by rural telephone companies, the court found that GCC meets all applicable criteria for ETC designation except the public interest factor, which was not addressed by the Commission. The court remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court **affirmed** the Circuit Court's decision. The Filing by GCC License Corporation for Desianation as an Eligible Telecommunications Carrier. 2001 SD 32, 623 N.W.2d 474.

7. Consistent with the court's decision, the matter came back to the Commission on remand, on the record, for the purpose of deciding whether it was in the public interest to designate GCC as an ETC in areas served by rural telephone areas. On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC.

8. The Stipulation listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies. See Attachment A. The Commission approved the Stipulation for Procedure on Remand. GCC and SDITC then provided supplemental briefing and the Commission heard oral arguments on July 26, 2001.

9. The question of whether it is in the public interest to designate an additional ETC in an area served by a rural telephone company necessarily requires a two-part analysis. The first part **of** the analysis is whether consumers will realize benefits from increased competition. The fact that the area in question involves a rural area leads to the second part **of** the public interest analysis: whether the rural area is capable of supporting competition. Or, in other words, will the introduction of competition in rural telephone company areas have detrimental effects on the provisioning **of** universal service by the incumbent carriers. As evidenced by 47 U.S.C. § 254(b)(3), Congress was concerned with the advancement and preservation of universal service in rural areas.

10. One **of** the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. An expanded local calling area will allow consumers to make more local calls, thus avoiding some toll charges. Id. In addition, GCC has pledged to offer unlimited local usage as part of one its universal service offerings. GCC Exhibit 4 at 9. For a monthly charge, GCC will offer consumers the supported services "with unlimited local Usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services. such as voice mail, caller-ID, call waiting, call forwarding. and conference calling." GCC Exhibit 4 at 13. Further, GCC will offer local service at



a rate similar to the incumbent telephone company. GCC testified that "if the incumbent is offering Service at \$15 a month, we'll offer service at a similarly \$15 a month." **TR.** at 117. The Commission finds that GCC's ability to offer an expanded local calling area along with its other offerings will benefit the public.

11. GCC also cites as a benefit a mobility component to its universal service offering that it intends to offer in the future. According to its testimony, GCC would not introduce a mobility component right away but intended to, over time, "expand its universal service offering to introduce a mobility component." GCC Exhibit 4 at 8. The Commission finds that a mobility component to local telephone service is also a benefit to the public.

12. GCC claimed that another benefit would be to bring "universal service to some consumers who currently do not have telephone service." GCC Supplemental Brief at 11. However, GCC failed to show that consumers located in areas served by the rural telephone companies were unable to receive service from the rural telephone companies. Thus, the Commission declines to find that the provision of service by GCC will result in universal service being provided to more consumers.

13. As stated above, the second part of the public interest analysis is whether the introduction of competition in these rural areas will ultimately prove detrimental to universal service. SDITC's witness' testimony as to whether designation was in the public interest focused on the uncertainties with respect to the level of universal support for rural telephone companies. Exhibit 6 at 10-11. He did not offer evidence that the rural telephone companies would be unable to continue to provide universal service to its customers if another carrier were granted ETC designation.

14. Since the Commission's hearing held on December 17, 1998, the FCC has issued new rulings related to universal service funding. As SDITC noted in its supplemental brief, the FCC has recently found that universal service support should be disaggregated and targeted below the study area level for rural telephone companies in order to ensure that the per-line level of support is more closely related to the cost of providing the service. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256 (rel. May 23, 2001) at ¶¶ 144-45. Pursuant to the FCC's order, rural companies are not required to select a disaggregation option until next year. Id. at ¶ 147. SDITC states that "[i]t would not be in the public interest to designate GCC as an ETC in rural service areas and allow it to receive portable universal service support before the disaggregation process has been completed and support is more closely targeted to the actual cost of serving each line." SDITC Supplemental Rebuttal Brief at 30. However, the Commission does not believe it would be in the public interest to delay the designation of additional ETCs until such time as the deadline for filing a plan has passed. If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible. The Commission further notes that an ETC, if it intends to retain its ETC designation, is obligated to offer its services throughout the service area and may not discriminate in favor of serving only the lowest cost lines.

15. In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate-of-return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe

that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

16. The Commission further finds that the fact that GCC will **be** providing a wireless service will likely lessen the loss of the incumbent carriers' universal service support. Wireless or cellular telephone service **is** often used as an additional, as opposed to a substitute, telephone service. Significantly, the FCC has decided that federal universal support will be extended to all lines served by ETCs in high-cost areas. Thus, if consumers subscribe to GCC's service but retain their **landline** service from the incumbent carrier, the incumbent carrier will still receive the same amount of universal service support for that line. See In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order, CC Docket No. 96-45, (rel. October 5, 2001) at ¶ 15.

17. Based on the record presented at the December 17, 1998, hearing, the Commission is unable to find that the addition of GCC as a second ETC will detrimentally affect the incumbent carriers' ability to provide universal service to their customers.

18. Another concern raised by SDITC related to the Commission's ability to regulate GCC. SDITC stated that it did not believe that it was in the public interest to designate GCC as an ETC if the Commission "has no ability after such designation to ensure that the service actually offered by GCC is consistent with the Commission's service quality rules and no ability to address consumer complaints concerning the service." SDITC Supplemental Rebuttal Brief at 24. However, the Commission finds that GCC **is** a telecommunications company as defined by SDCL 49-31-1(26), and thus is subject to the Commission's statutes and rules.

19. Based on these findings, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, subject to the conditions listed in findings of fact 20-24. The Commission finds that GCC's provisioning of a basic universal service throughout the study areas will be beneficial to the public. Further, the Commission finds that the evidence presented at the hearing does not support a finding that the incumbent rural telephone companies will be unable to continue to provide the supported services to their customers.

20. With respect to the advertising of its universal service offering, GCC states that it "currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. GCC's current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market. GCC will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings." Exhibit 3 at 9. Consistent with these commitments, GCC shall file its plan for advertising its universal service offering throughout its service areas.

21. **As** stated earlier, one of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. **At the time of the hearing, GCC did** not have a list of local calling areas. Therefore, once GCC determines its local calling areas, it shall file a list of areas with the Commission.

22. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link-Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411. In order to

inform customers of these services, GCC's service agreement shall advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply.

23. In addition, GCC has agreed to file with the Commission its service agreement it intends to offer to universal service customers. The Commission finds that this service agreement must be consistent with the Commission's service quality rules. The Commission further notes that as a telecommunications company, GCC is subject to SDCL chapter 49-13 which allows consumers to file complaints with the Commission. Thus, the Commission finds that the service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction.

24. At the time of the hearing, GCC had not yet finalized a universal service offering. Thus, GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).

3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.

4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

5. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.

6. Pursuant to the Circuit Court's Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, decision, GCC meets all applicable criteria for ETC designation. Based on the evidence presented at the December 17, 1998, hearing, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone

companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

It is therefore

ORDERED. that the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18th day of October, 2001

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

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JAMES A. BURG. Chairman

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PAM NELSON. Commissioner